

REMARKS

Claims 20, 24, 27-31, and 33-40 are pending in this application. The Examiner has issued a single action on the merits with respect to Claims 20, 24, and 27-31. That action was mailed on November 12, 2004. In a March 3, 2005 filing, the Applicants cancelled Claims 1-19, 21-23, 25, 26, and 32 and added Claims 33-40. The Examiner has yet to address the merits of Claims 33-40.

Presently, the Examiner has issued an action mailed April 4, 2005. In the Office Action Summary, the Examiner notes that Claims 1-40 are pending. This is not the case as Claims 1-19, 21-23, 25, 26, and 32 were previously cancelled.

The Examiner also notes in the Summary that Claims 20-40 are withdrawn from consideration. This is also not the case. Of Claims 20-40, Claims 21-23, 25, 26, and 32 were previously cancelled. Claims 20, 24, 27-31, and 33-40 have never been withdrawn.

The Examiner also notes in the Summary that Claims 1-19 are rejected. Any such rejection of Claims 1-19 is moot as those claims were previously cancelled.

Finally, the Examiner notes in the summary that Claims 1-40 are subject to a restriction requirement. As is discussed below in more detail, this cannot be the case as Claims 1-19, 21-23, 25, 26, and 32 were previously cancelled. Non-existent claims cannot be elected and thus cannot be subject to a restriction requirement.

ELECTION / RESTRICTION: The Examiner has issued a restriction requirement requiring the Applicants to elect between prosecuting Claims 1-19 in Group I and Claims 20-40 in Group II. Claims 1-19 have been cancelled and cannot be elected as they no longer exist. Of the claims in Group II, Claims 21-23, 25, 26, and 32 were previously cancelled and cannot be elected. Consequently, the Applicants elect to prosecute Claims 20, 24, 27-31, and 33-40 of Group II.

While the Applicants make the election without traverse, the Applicants respectfully note that restriction requirement is improper and not necessary. According to MPEP 803, restriction requires an applicant to elect one of two or more claimed inventions. Group I does not designate a claimed invention that can


be elected. All claims asserted to be in Group I were previously cancelled and are thus nonexistent. Group I does not exist and cannot be elected. In effect, the Applicants have only one choice – that is – to elect the pending claims in Group II.

FINAL REJECTION IS PREMATURE: The Examiner noted that the present Office Action is made final. According to the MPEP, a second or any subsequent office action on the merits is to be made final. MPEP 706.07(a). **Presently, only one office action on the merits has been given** – the office action mailed November 12, 2004. The current office action merely contains a restriction requirement and – according to MPEP 810 – is not an action on the merits.

Consequently, the finality is premature and the Applicants request that it be withdrawn according to MPEP 706.07(d).

CONCLUSION: The foregoing is believed to be a complete response to the outstanding Office Action.

Respectfully submitted,
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